

Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 L-03 SCA-01 JUSE-00 CIAE-00 INR-10

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TO AMEMBASSY BONN

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AMEMBASSY LONDON

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C O N F I D E N T I A L BERLIN 1019

E.O. 11652: GDS

TAGS: PGOV, WB, GE, GW

SUBJECT: BRUECKMANN CASE

REF: BERLIN 944

1. SUMMARY: IN WEEK SINCE KAMMERGERICHT'S DECISION CONFIRMING ITS EXTRADITION ORDER, VARIOUS PARTIES INTERESTED IN BRUECKMANN CASE HAVE OFFERED VARIOUS INTERPRETATIONS OF DECISION, AND SUGGESTED RANGE OF NEXT STEPS. CASE IS OFF FRONT PAGES, WITH GENERAL IMPRESSION THAT GIRL WILL BE IN WEST BERLIN JAIL FOR MANY MORE MONTHS BUT THAT SHE WILL NOT BE RETURNED TO GDR.
END SUMMARY.

2. AS REPORTED REFTEL, FIRST REACTION OF SENAT AND BERLIN POLITICIANS TO KAMMERGERICHT'S SURPRISE REAFFIRMATION OF ITS PREVIOUS DECISIONS WAS THAT COURT SHOULD NOT BE CRITICIZED BUT THAT DECISION DEMONSTRATED NEED TO AMEND 1953 LAW ON INNER-GERMAN LEGAL ASSISTANCE IN CRIMINAL MATTERS TO REFLECT REALITY OF NATIONAL DIVISION. GOVERNING MAYOR INFORMED ALLIED COMMANDANTS AND MINISTERS JUNE 12 THAT SENAT STILL BELIEVED IT POLITICALLY IMPOSSIBLE FOR GIRL TO BE RETURNED TO FACE TRIAL IN GDR, ALTHOUGH HE VOLUNTEERED SHE WAS NOT A VERY ATTRACTIVE PERSONALITY. HEAD OF SENAT POLITICAL OFFICE CONFIRMED TO

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MISSION OFFICER SAME DAY THAT ONLY QUESTION WAS HOW TO USE TIME

BEFORE DECISION OF STRASBOURG HUMAN RIGHTS COMMISSION (NOT EXPECTED FOR BETTER PART OF YEAR) TO DEVELOP POLITICALLY AND LEGALLY ACCEPTABLE ALTERNATIVE TO EXTRADITION. HEAD OF SENAT CHANCELLERY SAID THAT SENAT HAD ALREADY PASSED PROPOSAL TO FRG MINISTER OF JUSTICE FOR AMENDMENT OF 1953 LAW TO PROVIDE MORE DISCRETION FOR PUBLIC PROSECUTOR AND TO PERMIT KAMMERGERICHT TO TAKE ACCOUNT OF MORE FACTORS, INCLUDING POLITICAL REALITIES RELATING TO POSSIBILITY THAT EXTRADITION OF PERSON MIGHT BE SOUGHT BY GDR FOR POLITICAL AS WELL AS LEGAL REASONS. PRESS REPORTED THAT SENATOR FOR JUSTICE KORBER CONFIRMED TO HOUSE OF REPRESENTATIVES JUNE 13 THAT SENAT DID NOT ENVISAGE TURNING BRUECKMANN OVER TO GDR. KORBER ALSO QUOTED AS SUGGESTING SIMPLEST PROCEDURE MIGHT BE FOR FRG TO REPEAL 1953 LAW THUS REMOVING LEGAL BASIS FOR EXTRADITION.

3. PRESS ALSO REPORTED JUNE 14 INTENTION OF FEDERAL GOVERNMENT TO ADVANCE PROPOSALS OF ITS OWN FOR REVISIONS IN 1953 LAW. (CDU/CSU TABLED SEVERAL MONTHS AGO PROPOSAL WHICH WOULD PERMIT APPEAL FROM HIGHEST LAND COURT TO FEDERAL SUPREME COURT (BUNDESGERICHTSHOF) IN CASES DEALING WITH EXTRADITION TO GDR. CDU/CSU AMENDMENT WOULD HAVE RETROACTIVE EFFECT AT LEAST TO THOSE CASES WHERE FINAL DECISION OF LAND COURT HAD NOT YET BEEN EXECUTED IN ORDER TO COVER BRUECKMANN SITUATION.)

4. PRESS HAS GENERALLY SHOWN UNDERSTANDING FOR ALLIED ACTIONS, BUT SPRINGER PAPERS AND JUNE 10 EDITION OF "DER SPIEGEL" HAVE CRITICIZED SEVERELY KAMMERGERICHT. THEY ARGUED THAT BERLIN COURT WAS STIFF-NECKED IN UNWILLINGNESS TO ADMIT PREVIOUS "MISTAKE," WITH RESULT THAT LEGAL UNITY BETWEEN WEST BERLIN AND FRG DAMAGED AND BERLINERS' CONSTITUTIONAL RIGHTS WEAKENED.

5. BRUECKMANN'S ATTORNEY HAS SOUGHT TO KEEP POT BUBBLING WITH LETTERS TO ALLIED AUTHORITIES, WHICH HE IMMEDIATELY LEAKED TO PAPERS. IN FIRST LETTER, ADDRESSED TO BRITISH AND FRENCH COMMANDANTS, LAWYER COMPLAINED THAT THEY WERE VIOLATING EUROPEAN HUMAN RIGHTS CONVENTION, TO WHICH THEIR GOVERNMENTS WERE PARTY, BY POSITION THEY HAD TAKEN ON CASE AND THREATENED THAT UNLESS THAT POSITION WAS CHANGED HE MIGHT HAVE TO FILE COMPLAINT AGAINST UK AND FRANCE IN CONFIDENTIAL

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STRASBOURG. IN LETTER TO ALL THREE COMMANDANTS, LAWYER URGED THAT, AS ALLIES HAD ALREADY EXHIBITED INTEREST IN CASE BY INTERVENING TO PREVENT KAMMERGERICHT FROM TAKING ACCOUNT OF KARLSRUHE COURT'S DECISION, ALLIES SHOULD EXERCISE THEIR RESERVED RIGHTS AND RESPONSIBILITIES BY ESTABLISHING SPECIAL ALLIED COURT TO TRY BRUECKMANN IN WEST BERLIN. ALLIED MISSIONS HAVE DEVELOPED BRIEF TEXT (PARA 6 BELOW) WHICH WOULD BE SENT TO LAWYER BY CHAIRMAN OF AK LEGAL COMMITTEE

AS REPLY TO BOTH LETTERS. BRITISH HAVE INDICATED THEY
SENT TEXT TO THEIR EMBASSY FOR CONCURRENCE.

6. BEGIN TEXT: I HAVE BEEN INSTRUCTED BY THE COMMANDANT
OF THE FRENCH SECTOR OF BERLIN, IN HIS CAPACITY AS CHAIRMAN
COMMANDANT, TO REPLY TO YOUR TWO LETTERS OF 6TH AND 7TH
JUNE 1974 RESPECTIVELY.

THE ALLIED KOMMANDATURA DOES NOT CONSIDER THAT YOUR
LETTERS RAISE ANY NEW POINTS WHICH NECESSITATE A MODIFICATION
OF ITS POSITION MADE KNOWN IN ITS LETTER OF 6 JULY, 1973 TO
YOU AND IN THE CERTIFICATE OF THE BRITISH COMMANDANT OF
29TH MAY 1974 REQUESTED BY THE BERLIN KAMMERGERICHT CONCERNING
THE NON-COMPETENCE OF THE FEDERAL CONSTITUTIONAL COURT
FOR BERLIN MATTERS.

THE DECISION AS TO WHETHER OR NOT FRAULEIN BRUECKMANN
IS TO BE HANDED OVER TO THE GDR AUTHORITIES REMAINS ONE
SOLELY FOR THE COMPETENT AUTHORITIES IN BERLIN UNDER THE
RELEVANT LEGISLATION IN FORCE IN BERLIN. END TEXT
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Disposition Authority: WorrelSW
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Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
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